

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOHNATHAN C. LARGE,

Plaintiff,

v.

KAMERON HARVANEK,

Defendant.

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Case No. CIV-13-1242-F

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing pro se, has filed two Motions for Leave to Proceed *In Forma Pauperis*, ECF Nos. 2 and 7. Pursuant to an order entered by United States District Judge Stephen P. Friot, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). By an order dated December 23, 2013, the undersigned found that the Plaintiff's Motions to Proceed *In Forma Pauperis*, ECF Nos. 2 and 7, should be granted. The Plaintiff was advised that he may voluntarily dismiss this action in accordance with Fed. R. Civ. P. 41(a) on or before January 13, 2014, without incurring any fees or costs. On December 31, 2013 the Plaintiff filed a Motion for Order, ECF No. 9, requesting leave to file an "up to date trust fund account for the past six months". Also on December 31, 2013, an unsigned Motion to Dismiss, ECF No. 10 was filed. On January 10, 2014, the undersigned entered an Order, ECF No.

11, advising Plaintiff that if he intended to dismiss this action he must file a *signed* motion no later than January 21, 2014.

A review of the court file reveals that more than two months have passed without Plaintiff filing a response to the Court's Order, showing good cause for his failure to do so, or requesting an extension of time to comply with the Court's order. In fact, Plaintiff has not responded to the Court's order in any way. The undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

RECOMMENDATION

It is therefore recommended that this action be **DISMISSED** without prejudice to re-filing. Further, in light of this recommendation, it is recommended that the motion contained in **ECF No. 9**, be **DENIED**. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **April 4, 2014** in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and

Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on March 18, 2014.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE